injuries complained of, is sufficient to show the duty of defendant to plaintiff, and its breach.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Street Railroads, § 224.]

Writ of Error—Record—Bill of Exceptions—Necessity.—Where an order of the trial court showed that the defendant moved that the plaintiff be required to file a bill of particulars, that the court overruled the motion, and that the defendant excepted to the court's action, no bill of exceptions was necessary to present the ruling in the record for review.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, §§ 2417, 2350.]

Pleading—Bill of Particulars—Necessity.—In an action for injuries caused by the striking of a wagon driven by plaintiff by a street car, where the declaration contained a full and clear statement of the plaintiff's case, it was not error to refuse to require a bill of particulars.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 39, Pleading, §§ 954, 956.]

Street Railroads—Operation—Negligence of Street Railroad Company—Evidence.—Evidence that plaintiff was driving a wagon along a street railroad track on a downgrade, and that, as a car approached him slowly from the rear, it began to slip on the rails and the motorman reversed the current and applied sand freely to the rails, but was unable to stop the car till it pushed against the plaintiff's wagon until the pole of the wagon came in contact with the rear of another wagon, breaking the pole and causing plaintiff to fall off his seat into his wagon, was insufficient to show negligence of the street railroad company.

SIPE *v.* TAYLOR et al.

Nov. 22, 1906.

[55 S. E. 542.]

Limitation of Actions—Computation—Pendency of Litigation.—In 1870 a person became a surety on a bond and died. In 1871 a judgment was rendered on the bond against the personal representatives of the deceased surety. In 1887 a decree was entered directing process to issue against the principal and the personal representatives of the deceased surety, and directing that the cause should be referred to a commissioner, with instructions to settle the account showing the deficiency for which the surety was liable. The proceedings causing a delay in enforcing the judgment and determining the amount of the surety's liability were brought about by the acts of the personal representatives, and it was not until 1902 that a decree determining the amount of the liability on the bond was

rendered. Held, that the decree of 1902 was not rendered invalid by lapse of time.

Executors and Administrators—Actions—Limitations.—In 1903 suit was brought against the heirs and personal representative of the deceased surety to recover the amount of the decree. Held, that the liability of the heirs was not barred by limitations, notwithstanding Code 1887, § 2920 [Va. Code 1904, p. 699], limiting the time within which a claim may be proved against the estate of a decedent to five years from the qualification of his personal representative.

Principal and Surety—Liability—Discharge of Surety—Change in Obligation.—A decree appointed a commissioner to sell the lands of a decedent. The commissioner at one sale sold a part of the property to one who became a surety for a purchaser of another part thereof. Held, that the person becoming a surety for the purchaser became a quasi party to the suit, and the decree confirming the sale was binding on him, notwithstanding the fact that the decree changed the contract of suretyship.

Same.—A commissioner appointed by the court to sell the property of a decedent sold property to a purchaser, who was required to make provision for a cash payment of $2,075 and to execute three bonds for $2,075 each for the residue. The cash payment due was not paid in money, but by an order for $3,000 given by a third person. Held, that the variance in the terms complained of were matters which should have been brought forward by the surety before the confirmation of the sale to the purchaser, and his heirs, when sued for the amount of the surety's liability, could not escape liability on the theory that the terms of the sale were varied without the consent of the surety.

Payment—Application—Rights of Sureties.—The excess of the amount of the order over the required cash payment could not be applied to the satisfaction of the bond in the absence of an agreement between the commissioner and the purchaser that any part of the money when collected on the order should be applied to the payment of the bond.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 39, Payment, § 128.]

Subrogation—Sureties—Subrogation to Rights of Creditors.—A surety liable for only a part of a debt who pays that part is not entitled to be subrogated to the securities held by the creditor, unless the whole demand has been paid.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Subrogation, § 54.]

Judgment—Waiver of Service.—A purchaser at a judicial sale executed a bond with a surety securing a part of the purchase price. The purchaser had previously sold land to a third person, who gave him an order for the purchase price, which order the purchaser delivered to the officer making the sale as part payment. The third

person did not record her deed until after judgment had been rendered against the purchaser and the personal representative of the surety for the balance of the purchase price. Held that, as the amount of the order had been collected and applied to the purchase money due from the purchaser, the judgment could not be enforced against the lands purchased by the third person for exoneration of the estate of the surety.

HERRING *v.* WILTON.

Nov. 22, 1906.

[55 S. E. 546.]

Nuisance—Private Nuisance—Nature of Injury—Barking of Dogs.—The howling of dogs and the barking of puppies upon the premises of their owner, when they subject a neighbor and his family to great and continuous annoyance so that their rest is broken, their sleep interrupted, and they are seriously disturbed in the reasonable enjoyment of their home, constitute a nuisance which equity will enjoin.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Nuisance, § 23.]

Same—Abatement—Jurisdiction of Equity.—The jurisdiction of equity to abate by injunction a private nuisance resulting from the barking and howling of dogs, is not taken away by a town ordinance claimed to afford a remedy for whatever inconvenience may have been caused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Nuisance, § 49.]

DUKE et al. *v.* NORFOLK & W. RY. CO.

Nov. 22, 1906.

[55 S. E. 548.]

Sales—Construction of Contract—Time for Delivery.—Where a contract for the sale and delivery of cross-ties to a railroad company fixes no time for their delivery, the contract must be performed within a reasonable time.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 43, Sales, § 218.]

Same—Remedies of Seller—Action for Breach of Contract—Instructions.—In an action for breach of contract for the sale of cross-ties to a railroad company, which fixed no time for delivery, it was proper to instruct that the jury, in determining what constitutes a reasonable time, may consider the declarations of the parties, whether oral or written, and whether previous to the contract or